United Nations CMW/C/DZA/Q/2

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

List of issues in relation to the second periodic report of Algeria*

I. Information of a general nature

1. Please describe the progress made in reviewing the Labour Code (see CMW/C/DZA/2, para. 6). Please indicate how that work will lead to further implementation of the provisions of the Convention, including by providing information on the specific, time-bound and measurable goals and targets set for the implementation of migrant workers' rights and the provisions made for their monitoring.

2. Please provide information on the measures taken to improve the collection of quantitative and qualitative data, disaggregated by sex, age, nationality and migration status, for use in evaluating the implementation of the Convention. Please also provide data, disaggregated by sex, age and nationality, or, failing that, estimates on the number of irregular migrant workers residing or in transit in Algeria. Please also provide data, disaggregated by sex and age, on the number of Algerian migrant workers and members of their families abroad, including those in an irregular situation.

3. Please indicate whether the State party plans to make the declaration provided for in articles 76 and 77 of the Convention and thereby recognize the competence of the Committee to receive communications from States parties and individuals. Please also indicate whether the State party intends to ratify the following International Labour Organization conventions, which affect migrant workers and members of their families: the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Domestic Workers Convention, 2011 (No. 189).

4. Please provide information on measures taken by the State party to strengthen migration regulation and control mechanisms to ensure that private recruitment agencies do not charge excessive fees for their services and do not act as intermediaries for abusive foreign recruiters. Please inform the Committee whether recruitment agencies that facilitate the overseas employment of migrant workers who are nationals of Algeria are required to be licensed in both the State party and the country of employment. Please also inform the Committee whether they assume joint and solidary liability with the overseas employer for claims and liabilities that may arise in connection with the execution of the employment contract, including in respect of wages, disability compensation, repatriation and death, in particular the repatriation of the bodies of deceased migrant workers.

* Adopted by the Committee at its twenty-sixth session (3-13 April 2017).

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II. Information in relation to each of the articles of the Convention

A. General principles

5. Please describe the concrete steps taken to amend Act No. 81-10 of 11 July 1981 on the recruitment and conditions of employment of foreign workers and Act No. 90-11 of 21 April 1990 on labour relations so as to include a prohibition of direct and indirect discrimination on all the grounds enumerated in the Convention (arts. 1 (1) and 7), with respect to all aspects of employment and all categories of workers, including those employed in the informal sector and domestic workers (see CMW/C/DZA/2, paras. 223 and 224). Please describe the measures taken by the State party to ensure that migrant workers in an irregular situation, particularly those from sub-Saharan Africa, are not discriminated against in law and in practice.

6. Please provide examples of cases in which the Convention has been applied by national courts or administrative authorities. Please also provide information on:

(a) The judicial bodies and/or administrative structures authorized to examine complaints from migrant workers and members of their families, including those who are undocumented or in an irregular situation, who feel that their rights have been violated;

(b) The number and type of complaints examined by those bodies since 2010 and decisions taken;

(c) The legal assistance provided to migrant workers in a regular or an irregular situation and the measures taken to inform them and members of their families about the remedies available to them for violations of their rights;

(d) The reparation awarded to victims of such violations, including in the form of compensation.

7. The Committee has been informed of difficulties faced by sub-Saharan migrant workers in registering complaints with the police, in particular when they wish to file a complaint against a public official. Please comment on these reports and indicate what measures have been taken to remedy this situation. Please also describe the measures taken to ensure that migrant workers in an irregular situation, including those of sub-Saharan origin, who seek recourse to the courts for violations of their rights are not punished for illegal entry under Act No. 08-11 of 25 June 2008 on the conditions of entry, residence and movement of foreign nationals in Algeria.

8. The Committee has received information that migrant workers, in particular sub-Saharan migrants, are subjected to racism and discrimination in the State party. Please provide information on the steps taken to remedy this situation.

B. Part III of the Convention

Article 8

9. Article 175 bis 1 (2) of Act No. 09-01 of 25 February 2009, which established trafficking in persons as a criminal offence in the Criminal Code, provides for a fine and/or imprisonment for any person who leaves the national territory in a clandestine manner (see CMW/C/DZA/2, para. 93). Please provide detailed information on cases in which the departure from the country of an Algerian migrant worker is considered to be unlawful. Please also provide information on cases in which this provision has been applied to migrant workers and the members of their families and on the penalties imposed.

Article 10

10. The Committee has received information that migrants in an irregular situation are subjected by the Algerian authorities to physical and psychological violence, including sexual violence, extreme violence and life-threatening violence, in addition to exploitation,

humiliation and other forms of ill-treatment, especially during arrests and collective expulsions. Please provide information on the measures taken and envisaged to put an end to that situation. Please also indicate whether investigations have been carried out in this regard and provide information on the enforcement of any penalties.

Article 13

11. The Committee has received reports indicating that officials from organizations involved in the defence of migrants' rights have been subjected to intimidatory measures, arbitrary arrest and detention. Please comment on these reports and indicate what measures have been taken to remedy the situation.

Article 15

12. The Committee has been informed that the security forces confiscate the money and valuables or destroy the belongings of migrant workers in an irregular situation who have been or are in the process of being expelled, including the Moroccan migrant workers expelled by the State party in the past. Please comment on this information and indicate whether any measures have been taken to implement the Committee's recommendations (see CMW/C/DZA/CO/1, para. 25) on returning the legitimate property of expelled migrant workers, including the Moroccan migrant workers expelled in the past, or to provide them with fair and adequate compensation.

Articles 16, 17 and 18

13. Please provide information, disaggregated by sex, age and nationality, on the number of migrant workers in a regular or an irregular situation placed in administrative custody or judicial detention in the State party since 2010, as well as on the Algerian migrant workers held in States of employment, and whether the deprivation of liberty of these persons is linked to their status under immigration laws. Please provide information on the decisions taken against detained migrant workers in the State party, the number of cases in which they have benefited from the free assistance of an interpreter if they could not understand or speak the language used, places of detention and the conditions in which they are held, indicating whether convicted prisoners are held separately from persons in pretrial detention.

14. Act No. 08-11 establishes fines and/or prison sentences for migrants in an irregular situation. Please provide detailed data on convictions and on the penalties applied in this regard. In addition, please indicate whether the State party intends to amend its legislation to establish alternative measures in lieu of fines and imprisonment for migrant workers in an irregular situation. Please also indicate whether children may be prosecuted and detained for reasons of irregular migration and whether there exist legal and practical alternatives to their detention, including for unaccompanied children and families with children. In cases where no such alternatives are applied, please provide information on the grounds for and the conditions of their detention, indicating whether the children are held separately from adults, and on the measures taken to ensure that the best interests of the child are fully taken into account.

Article 22

15. The Committee has received reports of the recent collective expulsion of hundreds of sub-Saharan migrants, refugees and asylum seekers to the Niger. Please comment on this information. Moreover, since the law does not mention collective expulsion (see CMW/C/DZA/2, para. 218), please indicate whether the State party intends to amend its legislation in order to explicitly prohibit this type of expulsion.

16. Please provide information on the effective implementation of Act No. 08-11 and in particular on the implementation of its article 31, which provides for a remedy with suspensive effect against deportation decisions (see CMW/C/DZA/2, para. 55). Please indicate whether there is a mechanism for monitoring the application of this provision. Please also indicate whether there are provisions that require deportation decisions to be notified in writing to the migrant worker concerned. Please describe the measures taken to

implement the Committee's recommendation (see CMW/C/DZA/CO/1, para. 23) and amend article 36 of Act No. 08-11 so as to guarantee the right of appeal where expulsion orders are issued by *walis* (governors). Lastly, please also provide data, disaggregated by sex, age and nationality, on migrant workers and members of their families expelled from Algeria since 2010, the number of administrative appeals lodged by migrants and information concerning the decisions handed down in this regard.

Article 23

17. Please provide specific examples of the activities of and services provided by embassies and consulates of the State party to migrant workers and members of their families in the countries of employment, including in relation to detention and expulsion cases. Given the growing percentage of Algerian women among migrant workers, please provide information on efforts made to increase the gender-sensitivity of staff dealing with labour issues in embassies and consulates. Please provide data disaggregated by sex on staff working in those embassies and consulates.

Article 27

18. Please provide disaggregated data on the number of migrant workers, including those in an irregular situation, who are registered in the social security system of the State party. Please indicate whether migrant workers in an irregular situation and members of their families are covered by the social security system (see CMW/C/DZA/2, paras. 144 and 224). Please provide information on the benefits granted to migrant workers, including those in an irregular situation.

Article 28

19. The Committee has received information concerning the instructions given by the President of the Republic to ensure that all hospitals provide care for sub-Saharan migrants. Please provide information on the effective application of those instructions. Please also provide data on the number of migrants who have benefited from such care and indicate whether, in practice, migrant workers and members of their families receive necessary emergency medical care to save their lives or avoid irreparable harm to their health. Please also describe the measures taken to ensure that irregular migrants have access to health facilities and medical care without fear of arrest.

Article 30

20. During the previous dialogue with the Committee, the State party stated that there was no obstacle to access to education for children of migrant workers in an irregular situation. However, the Committee has been informed of practical difficulties that face these children in accessing education because of the irregular situation of their parents and the fact that fluency in Arabic is a prerequisite for enrolment. Please comment on this information in the light of article 30 of the Convention. Please also describe the measures taken to facilitate the integration of the children of migrant workers into the local education system, particularly with regard to the teaching of Arabic.

Article 33

21. Please provide further information on the mission of the Labour Inspectorate to provide advice and information to migrant workers about their rights and obligations and the most appropriate way to apply legal, regulatory and treaty provisions and arbitration decisions (see CMW/C/DZA/2, paras. 32-36). Please also indicate what measures have been taken to inform Algerian emigrants and migrant workers in transit through or living in the State party, as well as members of their families, of their rights under the Convention and their rights and obligations in the State of employment. Please also provide information on whether the State party has devised any specific information and training programmes on the Convention for relevant public officials, such as law enforcement officials, embassy and consular staff, social workers, judges, prosecutors and government officials.

C. Part IV of the Convention

Articles 43, 54 and 55

22. Please provide information on measures taken to ensure that migrant workers enjoy, in practice, equality of treatment with nationals of the State party with regard to:

(a) Access to education, vocational training, housing and social and health services;

(b) Protection against dismissal, unemployment benefits, access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the Convention;

(c) The exercise of their remunerated activity.

23. Please provide information on the steps taken to review Act No. 90-14, which is not in compliance with article 40 of the Convention in that it denies migrant workers in a regular situation the right to form trade unions (see CMW/C/DZA/2, para. 261).

24. Please describe the measures taken by the State party to give effect to the Committee's recommendation that it should take appropriate measures to facilitate the reunification of former Moroccan migrant workers with family members who have remained in Algeria (see CMW/C/DZA/CO/1, para. 35).

Article 47

25. Please provide more details on the measures taken to facilitate the exercise by Algerian migrant workers of their right to transfer their earnings and savings from the State of employment to Algeria (see CMW/C/DZA/2, para. 241) and describe the applicable legal framework in place to ensure this right. Please inform the Committee about fees charged for the transfer of earnings and savings. Please also provide information on how the bilateral and multilateral agreements concluded in the area of migration, including temporary labour programmes, guarantee migrant workers protection and social security and exemption from double taxation.

D. Part VI of the Convention

Article 64

26. Please indicate how the bilateral agreements concluded with France and Tunisia protect the rights of migrant workers and members of their families under the Convention and whether they are in compliance with the Committee's general comment No. 1 (2011) on migrant domestic workers, including by providing safe working conditions and ensuring their access to justice. Please also inform the Committee about any steps taken to foster cooperation with States of employment of Algerian migrant workers, including Saudi Arabia, so as to ensure the protection of their rights through frameworks and agreements guaranteeing, inter alia, standard employment contracts, labour inspections and access to remedies and other services.

Article 68

27. Please inform the Committee about the various schemes in place to facilitate the detection of victims of human trafficking abroad, to bring them back to the country and to help them reintegrate into society and their family, and about the number of repatriated victims. Please also provide information on any rehabilitation programmes available for victims of trafficking and on the measures taken, including awareness-raising and training for law enforcement officials, to ensure that victims of trafficking are not penalized under Act No. 08-11.

28. In relation to migrants who fall victim to organized criminal groups involved in trafficking in persons, please provide information on:

(a) Efforts made to prevent such situations;

(b) Measures taken to assist and protect migrants who fall victim to organized criminal groups involved in trafficking in persons;

(c) Training programmes provided to the judiciary, law enforcement officials, border guards and social workers in all regions of the State party on protecting the rights of migrants who fall victim to organized criminal groups involved in trafficking in persons;

(d) Measures taken to combat the root socioeconomic causes of trafficking of migrants, such as poverty and underdevelopment.